

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8608 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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KANNAIYALAL SOMALDAS BACHANI

Versus

ADDL.COLLECTOR FOOD & CIVIL SUPPLY CONTROLLER

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Appearance:

MR KR RAVAL for Petitioner

MR UDAY BHATT, AGP for Respondents

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 13/08/1999

ORAL JUDGEMENT

Leave to amend and join State of Gujarat as  
Respondent no.3. Amendment to be carried out forthwith.

Heard learned counsel Mr. Raval for the  
petitioner and Mr. Uday Bhatt, learned AGP for  
Respondents.

Rule. Mr. Uday Bhatt, learned AGP appears and

waives Rule for respondents. With the consent of the parties, the matter is taken up for final hearing today.

The petitioner is doing business of selling Edible Oil, Vegetable Ghee etc. and is possessing required licence to sell and store such articles. It is alleged that shop of the petitioner was inspected and searched by Civil Supplies Officers on 4th April, 1995. According to the petitioner, he was having two shops in the same area and at the time of inspection by Civil Supplies Officers, he was at his another shop. On the other hand, stand of the State is that as the petitioner did not co-operate, the officers were compelled to broke open the lock of the shop of the petitioner.

Having gone through the Show Cause Notice issued to the petitioner vis-a-vis the contentions raised by the petitioner in this petition, in my view, the stock seized by the Addl. Collector and District Supply Officer, Ahmedabad City was not the stock reserved/ stored in violation of any rules or Control Order. Wordings of Show Cause Notice itself show that 24 Kg. of Vegetable Ghee was found in excess and one 15 Kg. tin of edible oil Raida, though was shown in the stock register, was not found. Whether the action of seizing entire stock of edible oil and vegetable ghee for such an irregularity was justified or not was the question before the adjudicating authority - Addl. Collector and Addl. Collector- respondent no.1 recorded finding against the petitioner and vide his order dated 27.5.1996, confiscated the stock worth Rs. 41,741/-. Against the said order of respondent no.1 at Annex.C, the petitioner preferred appeal in accordance with the provisions of law before the Deputy Secretary, Food & Civil Supplies Corporation - respondent no.2 and vide order dated 30.5.1997, respondent no.2 confirmed the order passed by the Addl. Collector- respondent no.1. Both these orders are under challenge in this petition.

Mr. Raval, learned counsel appearing for the petitioner, after arguing at length and after citing number of authorities in support of his arguments, ultimately submitted that petitioner would be satisfied if the matter is remanded to the respondent no.1 for reconsideration in view of the decision rendered by this Court (Coram: M.S.Shah, J ) in Manubhai Raghavbhai v/s Jt. Secretary, Food & Civil Supplies, Gandhinagar & Anr., in Spl.C.A. No.3200 of 1997, decided on 14th October, 1997, as the petitioner has not been heard by the authority concerned and he is hopeful to convince the authority concerned if he is given an opportunity of

being heard and if matter is remanded for consideration afresh in accordance with law. On the other hand, it has been stated by Mr. Uday Bhatt, that it is the experience of the State Officers that after remand, parties concerned do not co-operate and if petitioner herein agrees to co-operate, then State Machineries are ready to reconsider the matter afresh and in accordance with law.

Before passing the order of remand, I would like to reproduce some observations made by the Apex Court in N.Nagendrarao v/s State of A.P., AIR 1994 SC 2263 as under:-

" Since the power ( of confiscation under Section 6A of the Essential Commodities Act) is very wide as a person violating the Control Orders is to be visited with serious consequences leading not only to the confiscation of the seized goods, packages or vessel or vehicle in which such essential commodity is found or is conveyed or carried, but is liable to be prosecuted and penalised under S.7 of the Act, it is inherent in it that those who are entrusted with responsibility to implement it should act with reasonableness, fairness and to promote the purpose and objective of the Act. Further, the goods seized are liable to be confiscated only if the Collector is satisfied about violation of the Control Orders. The language of the section and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word "may". A trader indulging in black marketing or selling adulterated goods etc. should not, in absence of any violation, be treated at par with technical violations, such as failure to put up the price list etc. or even discrepancies in stock."

It is pertinent to note that when most of the stock was in accordance with the Stock Register and no violation was found by Inspecting Officer at the relevant point of time, almost entire stock ought not to have been seized by the authorities concerned, more particularly when it is the grievance of the petitioner that he has not been afforded any opportunity of hearing. Under the circumstances, without observing anything on merits of the case, it would be in the interest of justice to remand this matter to the Addl. Collector for adjudication afresh as submitted by the learned counsel for the petitioner, after affording an opportunity of hearing to the petitioner. At this stage, learned AGP Mr. Bhatt submitted that the petitioner should be

directed to co-operate the authority concerned in expeditious disposal of the matter.

For the reasons aforesaid, impugned order dated 30.5.1997 Annex.E passed by respondent no.2 confirming the impugned order dated 27.5.1996 Annex.C passed by the Addl. Collector are hereby quashed and set aside and the matter is remanded to Addl. Collector- respondent no.1 for considering the question of confiscation afresh in light of the observations made in this order as expeditiously as possible after affording an opportunity of hearing to the petitioner and in accordance with law. The petitioner is also directed to co-operate the authority concerned for expeditious disposal thereof.

Rule is made absolute to the aforesaid extent with no order as to costs.

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